

1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 IN RE: REALPAGE, INC.,) Case No. 3:23-md-03071
5 Rental Software Antitrust)
6 Litigation (No. II), et al.) CHIEF JUDGE CRENSHAW

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9 BEFORE THE HONORABLE
10 CHIEF DISTRICT JUDGE WAVERLY D. CRENSHAW, JR.

11 TRANSCRIPT OF PROCEEDINGS

12 March 8, 2024
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23 PREPARED BY:

24 LISE S. MATTHEWS, RMR, CRR, CRC
25 Official Court Reporter
 719 Church Street, Suite 2300
 Nashville, TN 37203
 lise_matthews@tnmd.uscourts.gov

1 **For the Plaintiffs:**

2 Tricia Herzfeld

3 Patrick Coughlin

4 Stacey Slaughter

5 Swathi Bojedla

6 Brendan Glackin

7 Daniel J. Walker

8 Michaela Wallin

9 Daniel Herra

10 Christian Levis

11 Joseph Saveri

12 Benjamin Widlanski

13 Walter Noss

14

15 **For the Defendants:**

16 Thomas H. Dundon

17 Jay Srinivasan

18 Dan Fenske

19 David Cross

20 Boris Bernstein

21 Emily Collins

22 Alyse Stach

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1 The above-styled cause came on to be heard on
2 March 8, 2024, before the Honorable Waverly D. Crenshaw, Jr.,
3 Chief District Judge, when the following proceedings were
4 had, to-wit:

5 THE COURT: All right. Be seated.

6 All right. We're here on Case Number 23-3071.

7 In Re: RealPage, Inc. Rental Software Antitrust.

8 Those people here on behalf of the plaintiff, and
9 specifically the plaintiff leadership, please make your
10 presence known on the record.

11 MS. HERZFELD: Tricia Herzfeld. I'm liaison
12 counsel on behalf of the plaintiffs, Your Honor.

13 MR. COUGHLIN: Patrick Coughlin on behalf of
14 plaintiffs, Your Honor.

15 MS. SLAUGHTER: Stacey Slaughter on behalf of the
16 plaintiffs, Your Honor.

17 MS. BOJEDLA: Swathi Bojedla on behalf of the
18 plaintiffs.

19 MR. GLACKIN: Brendan Glackin for the plaintiffs.

20 MR. WALKER: Daniel Walker for the plaintiffs.

21 MR. WALLIN: Michaela Wallin for the plaintiffs.

22 MR. HERRA: Daniel Herra for the plaintiffs.

23 MS. LEVIS: Christian Levis for the plaintiffs.

24 MR. SAVERI: Go afternoon, Your Honor. Joseph
25 Saveri appearing on behalf for the plaintiffs.

1 MR. WIDLANSKI: Benjamin Widlanski on behalf of
2 the plaintiffs.

3 MR. NOSS: Walter Noss on behalf of the
4 plaintiffs.

5 THE COURT: All right. And on behalf of the
6 defendants.

7 MR. SRINIVASAN: Good afternoon, Your Honor. Jay
8 Srinivasan for RealPage.

9 MR. FENSKE: Good afternoon, Your Honor. Dan
10 Fenske for Mid-America --

11 THE COURT: Mr. Fenske, you are not on the
12 leadership. It should be Ms. Miller.

13 MR. FENSKE: Yes, Your Honor. We had understood
14 in a prior communication -- I see you're shaking your head,
15 Your Honor.

16 THE COURT: No. All right. You can be seated.

17 MR. FENSKE: Thank you.

18 MR. CROSS: Your Honor, David Cross of UDR.

19 MR. BERNSTEIN: Good afternoon, Your Honor. Boris
20 Bernstein on behalf of Greystar. I, too, am not on
21 leadership, and I apologize, Your Honor, but I am here for
22 Ms. Lent who was just appoint- --

23 THE COURT: Ms. Lent should be here. Everybody
24 else has taken their time.

25 MR. BERNSTEIN: I apologize, Your Honor. Your

1 Honor just appointed Ms. Lent yesterday and she has a family
2 funeral today.

3 THE COURT: Okay. And I do, too. I've been
4 planning one all day.

5 MR. BERNSTEIN: I'm sorry to hear that, Your
6 Honor.

7 MS. COLLINS: Emily Collins for the Lincoln
8 Property Company.

9 THE COURT: And again, you're not on leadership.
10 What makes you think you can come and sit there?

11 MS. COLLINS: We were under the impression -- I
12 apologize -- we could substitute.

13 MS. STACH: Alyse Stach on behalf of Equity
14 Residential; same as --

15 THE COURT: So I guess Mr. Srinivasan and
16 Mr. Cross can carry the day then.

17 MR. SRINIVASAN: We will, Your Honor. And we
18 apologize, but we had sent an email to the Clerk's office at
19 one point asking if --

20 THE COURT: And the Clerk doesn't control my
21 courtroom.

22 MR. SRINIVASAN: Understood, Your Honor.

23 THE COURT: So I think everybody knows that the
24 reason we're here is because I -- I've said in the order I'm
25 very disappointed. That doesn't begin to describe my

1 feelings. I'm really shocked. Because given the talent and
2 the caliber of lawyers here, those who are properly on the
3 leadership, we shouldn't be here today wasting this time and
4 money. And it's not going to continue. If you all are going
5 to be leaders, then lead. Lead each other. Because you all
6 know the right thing to do. But this case is just starting.
7 And we're here on initial disclosures? Makes no sense at
8 all. But if that's -- if that's the behavior you're going to
9 engage in, then there are going to be repercussions until
10 such time as you can really serve and be the caliber of
11 lawyers you are. So that's why I'm upset and that's why
12 we're here. But we're going to try to straighten it out here
13 today so going forward we can focus on the -- on the issues
14 in the case and not these unnecessary status conferences.

15 So the first thing I want to do -- I gave you what
16 is a working draft Order. And I gave you a few minutes to
17 look at it. I want to walk through it. And then I'm going
18 to ask everyone who's properly here as part of the
19 leadership -- did everyone on the plaintiffs side get one?
20 Good. -- what you think.

21 So let's go to the meat and potatoes here. And
22 that's paragraph 3. Before anybody can file a
23 discovery-related motion, this is what you're going to have
24 to do. That does not mean you can't talk on the phone, talk
25 by Zoom, talk -- talk over the -- send letters or emails, or

1 whatever. But if you do that, you can't file a
2 discovery-related motion. And the idea that you can put a
3 motion in a status report, absolutely not. I've already
4 denied that -- if that's a motion.

5 But if you want to file one, you're going to have
6 to have an in-person, face-to-face conference with the
7 affected parties represented by their attorneys. You can't
8 do the face-to-face by telephone. You can't do the
9 face-to-face by Zoom. You can't do the face-to-face by
10 video. You have to do it in person face to face.

11 And if that doesn't resolve it, now here's the
12 procedure to file a motion. The motion can only be filed by
13 the attorneys who were present at the face-to-face. So if
14 you don't attend it, you can't file the motion.

15 Well, what if they've already talked about that
16 issue? Well, have another face-to-face. You may change
17 their mind. So only if you've engaged in a face-to-face
18 conference can you then proceed to follow the rest of this to
19 file a motion.

20 So first, it's only those attorneys who
21 participated. Why do I want to know -- and I need to know
22 who participated and the duration. And that's because I want
23 to know how long it took. And if the report says it took ten
24 minutes, we'll just do it again. Because I can look at the
25 issue and determine whether or not you made a substantial

1 effort to do so. I want to know who participated because
2 that's going to be the person I'm going to want to talk to if
3 and when we get together, not somebody else coming in who
4 didn't -- who wasn't there for the face-to-face.

5 Can I send an associate? You can send anybody you
6 want to, as long as they've got authority to resolve the
7 dispute, and as long as you know that's the person who's
8 going to have to come to the Court if we have a hearing on
9 it. Then you have to file a motion for a discovery
10 conference, which is essentially a motion asking the Court to
11 get involved, and telling me why. And then you still have to
12 provide me our local Rule 37.01 statement in ten pages -- not
13 per party. Jointly. If it can't be said in ten pages, you
14 need to edit down until you get to ten pages. And, no, you
15 can't file a 50-page attachment. Don't give me 25 -- I'm
16 only going to read -- Judge Holmes and I are only going to
17 read the ten pages. And if you attach all that other stuff,
18 we'll just rule on it on the ten pages and move on.

19 And once you file that, we'll let you know if
20 we'll get together in person or if we'll get together by
21 phone. And you'll know if I'm handling it or if Judge Holmes
22 is going to be handling it. But unless you follow those
23 steps, then it will just be denied without prejudice.

24 So essentially I'm putting in place a
25 face-to-face, in-person requirement, and until you do that,

1 don't -- don't bring it to me. And don't -- and if you do it
2 and file it -- if you don't do it and file it, don't expect
3 an answer.

4 All right. So let me start with the plaintiff.
5 Mr. Herzfeld, any questions about the process to file a
6 discovery related -- that you have?

7 MS. HERZFELD: No, Your Honor, I don't.

8 THE COURT: Mr. Coughlin?

9 MR. COUGHLIN: No, Your Honor. No questions.

10 THE COURT: Ms. Slaughter?

11 MS. SLAUGHTER: No, Your Honor. Thank you.

12 THE COURT: Ms. Bojedla?

13 MS. BOJEDLA: No, Your Honor. Thank you.

14 THE COURT: Mr. Glackin?

15 MR. GLACKIN: No, Your Honor. Thank you.

16 THE COURT: Mr. Walker?

17 MR. WALKER: No, Your Honor.

18 THE COURT: Ms. Wallin?

19 MR. WALLIN: No, Your Honor. Thank you.

20 THE COURT: Mr. Herra?

21 MR. HERRA: No questions, sir.

22 THE COURT: Mr. Levis?

23 MS. LEVIS: Levis. No, Your Honor.

24 THE COURT: Saveri?

25 MR. SAVERI: It's Saveri, Your Honor, but no

1 questions. Thank you.

2 THE COURT: Widlanski?

3 MR. WIDLANSKI: Close enough, Your Honor. No
4 questions.

5 THE COURT: Mr. Noss?

6 MR. NOSS: No questions, Your Honor.

7 THE COURT: Okay. Mr. Srinivasan?

8 MR. SRINIVASAN: No questions here, Your Honor.
9 Thank you.

10 THE COURT: And Mr. Cross?

11 MR. CROSS: Your Honor, just logistical. When
12 I've done this in other courts, the Court alternates the
13 location, just so it avoids disputes. I didn't know if you
14 thought about how we would determine where the in-person meet
15 and confer happens.

16 THE COURT: I care not at all.

17 MR. CROSS: Thank you.

18 THE COURT: I care not at all.

19 So the second thing I want to discuss is the joint
20 status report form. So the Court expects that these status
21 report forms are going to be cumulative. That means it's a
22 living, breathing thing. And I need them to be in the format
23 that I'm requesting, that you'll fill out -- old material
24 will remain on the status report form. Why? Because I'm
25 thinking ahead, and that's going to be helpful for me when we

1 get, you know, six, eight months from here. And then any new
2 material has to be in bold. When you're filling out the
3 form, you have to complete all items. Some things may not be
4 in effect yet, but you'll say that hasn't occurred. But once
5 we start getting into privileged information -- everything
6 has to be filled out. You can't skip anything. And even now
7 just say it's not applicable at this time, and will become
8 applicable later on.

9 So let's go through that. Section 1 deals with
10 just bringing me up to date on the status of settlement for
11 each and every party. I am not asking for confidential.
12 Don't file anything under seal, unless you comply with the
13 Sixth Circuit rule. But don't file it under seal with the
14 settlement. I don't want to know. We've got people, that
15 y'all selected, to engage in settlement. But I do want to
16 know that settlement is being proceeded -- every party is
17 proceeding in some form of settlement, directly with the
18 plaintiffs, through one of the mediators, what have you. I
19 just want to know that's occurring, and I want your insight
20 if there's some issue out there that requires the Court's
21 resolution to help settlements be productive. And I want to
22 know the next time.

23 I think you probably saw in the case management
24 order that every party's going to be required to engage in
25 settlement. And I think there's a sentence in there that

1 says -- and I anticipate that occurring on at least a
2 six-month basis. I just need to know everybody's doing it.
3 I can check that off the list and we can move on. So again,
4 I'm not asking for confidential settlement strategies. I'm
5 not interested in that. I just want to know that you're in
6 good faith engaging in settlement at some point.

7 Section 2 deals with discovery. On each one of
8 the elements that's outlined in the case management order --
9 I guess we're at requests for documents. I guess we'll get
10 there one day. Tell me where -- provide me the status of
11 each one of those, the deadline, when it was served, the
12 deadline for response, and any meet and confer regarding
13 discovery issues. And do that with some specificity so I can
14 understand what's going on. Err on the side of succinct
15 information, not necessarily being verbose.

16 B, C -- B is pretty straightforward. Once you all
17 get to structured data discovery, I need to know what's going
18 on and what to expect.

19 Number C is I think self-evident. What discovery
20 has occurred since our last status conference, and what you
21 anticipate occurring before the next status conference. I
22 just -- I need enough information that I can see the case is
23 moving or -- moving forward in a reasonable manner or there
24 are some stumbling blocks some place that I either need to
25 anticipate or we need to discuss. And, of course, if there

1 are any discovery-related motions, put those there to make
2 sure the Court's responding to them, if they've been properly
3 presented.

4 The other items simply ask you to report on your
5 agreed protocols for 502 evidence in the case management,
6 depositions, electronic -- again, I just need to know if any
7 party is anticipating or has identified some issue -- and I
8 want to know as soon as possible. Maybe it's not ripe for
9 briefing, but if you already see an issue's coming up, then
10 go ahead and share that with me.

11 And then finally, Mr. Coughlin and Mr. Srinivasan
12 will be responsible for presenting -- agree on some kind of
13 status conference agenda -- proposed status conference
14 agenda. And this is a joint status report. So that means
15 y'all have to get together and agree on what goes in it. And
16 I know there are a lot of lawyers involved. I know lawyers
17 have a lot of opinions. But before you can submit the agreed
18 joint status report -- well, when you submit it, I need a
19 signature line essentially saying approved by -- and there
20 needs to be a line there for Mr. Coughlin to sign-off, and
21 approved by; there needs to be a line for Mr. Srinivasan to
22 sign. And then I know it's ready for me to read.

23 So again, complete each category. Don't leave it
24 blank, or tell me why it's not relevant now. And give me
25 enough information.

1 So let's do it again.

2 I guess, Mr. Herzfeld, any issues you see at this
3 point with the joint status report.

4 MS. HERZFELD: No, Your Honor.

5 THE COURT: Mr. Coughlin?

6 MR. COUGHLIN: Just a few clarifications, Your
7 Honor.

8 THE COURT: Okay. Good.

9 MR. COUGHLIN: So in the first -- in the
10 settlement discussions -- I'll just say to the Court, we are
11 currently engaged with at least a half a dozen defendants
12 separate and apart from the bigger mediations with the
13 smaller group and the bigger group.

14 Those -- I would say that -- from those
15 discussions I would infer that those entities do not want to
16 be named that they're meeting with us separately from the
17 larger groups. And you've asked for -- to identify the date
18 or dates of the last settlement meeting or mediation. And
19 I'm pretty sure, just even the fact that somebody's meeting
20 with us separately, they would not like to disclose. We've
21 reached settlements with at least -- maybe not completely --
22 three defendants, but then we're meeting with another half
23 dozen. And I'm just concerned about -- and maybe that's not
24 my issue. Maybe that's their issue.

25 THE COURT: No. I think it is your issue. But

1 it's your issue along with those attorneys representing those
2 parties. Y'all figure it out.

3 MR. COUGHLIN: Okay.

4 THE COURT: I just need to know.

5 MR. COUGHLIN: Okay.

6 THE COURT: But you all figure it out.

7 MR. COUGHLIN: We'll figure out --

8 THE COURT: Because I'm not in a position -- you
9 don't want me to. I don't know the -- I don't know the
10 concerns that their individual clients have. I don't know
11 the concerns your clients have. You don't want me dictating
12 that. Y'all need to figure it out. And you need to give me
13 enough information so I know that they're fulfilling the
14 requirement that we're all going to engage in some type of
15 discussion every six months.

16 MR. COUGHLIN: We'll figure it out.

17 THE COURT: Yes you will.

18 MR. COUGHLIN: The next one, in the discovery, we
19 are -- we've already engaged in a number of meet and confers
20 on a number of issues about the initial disclosures. And
21 it -- I anticipate that the actual number in meet and confers
22 may go into the hundreds because of how many defendants and
23 how -- like, this morning, we had a meet and confer with a
24 mid -- midsize defendant, and we talked about the
25 disclosures -- I'm just using them as an example. -- talked

1 about the disclosures. We had listed some eight people; they
2 had listed two. They said they would take a look at our
3 list, they'll get back to us. And I know that we're going to
4 have at least three or four meetings with that one defendant
5 before we would ever have an impasse or anything. So we're
6 engaging in that with all of these defendants. And the
7 leadership has split up that with all the different
8 defendants around the country and the area. So I'm just
9 concerned about that --

10 THE COURT: I'm not sure I understand your
11 question.

12 MR. COUGHLIN: My question is, you don't really
13 want to hear -- I don't think you want to hear -- about that
14 we had a meet and confer in the morning -- this morning at,
15 you know, 10 a.m., then we had another one the next day, and
16 had another one. You just want to know that we're meeting
17 and conferring about the issue.

18 THE COURT: So let's go back. I only care about
19 the meet and confers when it's going to lead to a
20 discovery-related motion.

21 MR. COUGHLIN: Got it. That's all --

22 THE COURT: You all don't need to -- like I said,
23 you can meet by Zoom. You can meet in the bar. I don't
24 care. Meet wherever you want to. In whoever's house you
25 want be to.

1 MR. COUGHLIN: You want the final --

2 THE COURT: If you want to bring a case here --

3 MR. COUGHLIN: Got it.

4 THE COURT: -- a motion here, it has to be in
5 person and I need to know all the circumstances.

6 MR. COUGHLIN: That's all the clarification I
7 need, Your Honor.

8 THE COURT: Okay. And I -- you raise a good
9 point. And I tried to take -- I thought we had taken care of
10 it. No, I don't want to know when you meet and confer and
11 change a deposition from 9 to 1. I don't need to know.
12 Don't want to know. Okay.

13 All right. So I guess, Ms. Slaughter?

14 MS. SLAUGHTER: I understand, Your Honor. Thank
15 you.

16 THE COURT: Ms. Bojedla?

17 MS. BOJEDLA: You clarified it for me. Thank you.

18 THE COURT: I didn't cut you off, did I,
19 Mr. Coughlin?

20 MR. COUGHLIN: No, Your Honor.

21 THE COURT: Mr. Glackin?

22 MR. GLACKIN: Good morning, Your Honor. I just --
23 or afternoon I should say. I just have a suggestion, if you
24 don't mind.

25 THE COURT: Sure.

1 MR. GLACKIN: You might consider adding to the
2 list of things you want to hear about, whether or not the
3 parties are aware of any issues relating to the preservation
4 of evidence. If there -- if there becomes an issue in the
5 case about evidence being lost or discoverable material being
6 lost because -- you know, for whatever reason, in my
7 experience, Courts have wanted to know about it sooner rather
8 than later. And so it's just a suggestion, Your Honor.
9 Again, take it for what it's worth. Other than that --

10 THE COURT: Well -- yeah, that's fine, but number
11 8's pretty wide open there: Provide a proposed status
12 conference agenda. So if you all think that that's something
13 we need to talk about, that's your catchall. You can add it
14 there.

15 MR. GLACKIN: You know, I more had in mind, Your
16 Honor, that by including it as a specific topic then it
17 becomes clear that if a party knows it has an evidence lost
18 issue it's under affirmative obligation to make it known,
19 rather than waiting for it to be found out about.

20 THE COURT: Yeah, but if you have that issue, why
21 aren't you talking to the party affected?

22 MR. GLACKIN: Well, in an ideal world, yeah, I
23 agree that would happen.

24 THE COURT: Because I doubt I'm going to look
25 at -- I don't think I'm going to look at any motion related

1 to discovery until you all have gotten together to talk about
2 it. And when we do get together, my first question is, well,
3 have you talked since you filed the motion. But that's --
4 that's a good point. But again -- and I'll consider in
5 making that something. But when you give me your proposed
6 status conference agenda -- I mean, if Mr. Coughlin and
7 Mr. Srinivasan sign-off off on it, you can have here are the
8 items for the plaintiffs, here are the items for the
9 defendants. We can address it that way.

10 MR. GLACKIN: Okay. Very good, Your Honor.

11 THE COURT: And I think we've already filed in the
12 case when everyone's document holds went into place. And I
13 think that's been amended once. So that's in place, as well.
14 Okay.

15 Mr. Walker?

16 MR. WALKER: I have no questions, Your Honor.

17 THE COURT: Ms. Wallin?

18 MS. WALLIN: No questions, Your Honor.

19 THE COURT: All right. That back row is just
20 problematic. So y'all take. . .

21 MR. HERRA: No questions, Your Honor.

22 THE COURT: You need to say your name so we have a
23 record.

24 MR. HERRA: Mr. Herra. No questions, Your Honor.

25 MS. LEVIS: Christian Levis. No questions.

1 MR. SAVERI: Joseph Saveri. No questions, Your
2 Honor. Thank you.

3 MR. WIDLANSKI: Ben Widlanski. No questions, Your
4 Honor.

5 MR. NOSS: Walter Noss. No questions, Your Honor.

6 THE COURT: Mr. Srinivasan?

7 MR. SRINIVASAN: No questions, Your Honor. Thank
8 you.

9 MR. CROSS: Your Honor, just a clarifying
10 question, just to make sure I understood your exchange with
11 Mr. Coughlin.

12 THE COURT: Sure.

13 MR. CROSS: So in Section 2A of the joint status
14 report it requires the parties to describe the specificity as
15 required by the discovery dispute resolution procedures any
16 discovery issue that was resolved by the parties without the
17 assistance of the Court.

18 I understood from your exchange with Mr. Coughlin
19 you're only looking for us to identify issues that were not
20 resolved; is that right?

21 THE COURT: That's right.

22 MR. CROSS: I just wanted to be sure you're not
23 looking for a listing of things that --

24 THE COURT: Well, I take that -- no. I am.

25 MR. CROSS: Okay. That's why I wanted to clarify --

1 THE COURT: I expect you all to have some judgment
2 here. Yeah, I kind of do want to know if you have made a
3 resolution on a substantive discovery-related motion. One,
4 if you bring a similar motion to me, that's going to inform
5 what we do. Again, I don't need to know about changing the
6 times of depositions or the place. But, yeah, if it's a
7 substantive -- use your judgment.

8 I kind of think that if that issue comes before me
9 and you've resolved it ten times this way the party in
10 opposition is going to say, well, Your Honor, ten times we
11 did this. But just in case that slips through the cracks, if
12 there's been a substantive resolution on a discovery issue,
13 yeah, I do kind of want to know that.

14 MR. CROSS: Thank you, Your Honor.

15 THE COURT: Yeah, use your judgment.

16 MR. CROSS: Thank you, Your Honor.

17 THE COURT: That's a good one.

18 One other safety net I need to put in place here.
19 And he must have read my mind, which is interesting, because
20 I didn't ask him to be here. But we've got two -- I think --
21 we only have two local lawyers here, Mr. Herzfeld, and
22 there's no one else on the plaintiffs' side in leadership on
23 the -- on the leadership team. Right. And then we've got
24 Mr. Srinivasan's local counsel Tom Dundon here. I'm not
25 going to order this. But I am going to be -- I want

1 Mr. Dundon and Mr. Herzfeld to know, you both have a
2 responsibility on your respective sides to make sure the
3 lawyers who don't typically practice in the Middle District
4 know the culture and practice of the Middle District. And,
5 yeah, I'm going to kind of hold you responsible when that
6 doesn't occur. And, yeah, you're going to need to be here
7 when we take it up. So, yeah -- so Ms. Herzfeld and
8 Mr. Dundon -- you know, use him -- use them as a resource to
9 make sure are we doing this the way that we've done it for
10 years here in the Middle District of Tennessee. And if we're
11 not, we need to have a really, really good reason for varying
12 from the normal practice in the Middle District. Is that --
13 can you do that, Mr. Herzfeld?

14 MS. HERZFELD: Absolutely, Your Honor.

15 THE COURT: Mr. Dundon?

16 MR. DUNDON: Yes, Your Honor.

17 THE COURT: Okay. So I've got some conclusion
18 thoughts, but I thought I would stop at this point, see if
19 anybody on either side of the leadership team thinks this is
20 a good time to share something that could be productive going
21 forward. Anybody?

22 MR. COUGHLIN: I don't think so, Your Honor. I
23 think we got your message, and I think we've heard you loud
24 and clear.

25 THE COURT: Okay. On the next row, Mr. Glackin's

1 row?

2 MR. GLACKIN: Nothing from me, Your Honor.

3 THE COURT: On the last row.

4 MR. WIDLANSKI: I think we're all good over here,
5 Your Honor.

6 THE COURT: Thank you.

7 And then Mr. Cross, Mr. Srinivasan, anything
8 that...

9 MR. SRINIVASAN: Nothing particularly germane to
10 this, Your Honor. But I think in general, and we appreciate
11 the Court's approach in all of this.

12 I think -- we have a big group here, and, you
13 know, I usually have a lot of daggers staring at the back of
14 my -- towards my back. And I think folks are just wanting to
15 be mindful of when there are issues related to individual
16 defendants they are able to make their arguments and appear,
17 and I don't think that's been an issue, and I imagine the
18 Court agrees -- and you're nodding. We just want to make
19 that point.

20 THE COURT: Mr. Cross?

21 MR. CROSS: Nothing to add, Your Honor.

22 THE COURT: So I think Mr. Srinivasan raises a
23 good point. At least right now I see a difference in
24 procedural kinds of rules or requirements and substantive.
25 And I do agree that when it comes to individual defendants, I

1 put them -- their concerns are more in the substantive bucket
2 than the procedural. I can't have individual procedural
3 rules for every defendant, big, small or otherwise. There
4 needs to be one rule applicable to all. Yes, when it comes
5 to substantive kinds of issues, that's when it becomes
6 important for y'all to share that, and then I'll consider it
7 and do with it what I need to do.

8 MR. SRINIVASAN: And I think the way you've set
9 this up, to make it with the face-to-face meetings and only
10 the folks involved appearing I think sort of forces that any
11 way, in a positive way, as far as we're concerned. So we
12 appreciate that.

13 THE COURT: Okay. So I thought while we were --
14 we were here it might be helpful to know some general
15 thoughts I have about discovery. You all probably never
16 heard of him, but there was a judge who served on the Court
17 for many, many, many years, and did so with much distinction.
18 And that was Judge Thomas Higgins. And for better or worse
19 it seemed like every case I filed in the Middle District went
20 to Judge Higgins. And Judge Higgins was the most
21 demanding -- more demanding than I am, or any judge I think
22 here on the Middle District. He was just very demanding. He
23 had a way of doing things, and he didn't -- he didn't veer
24 from it, no matter the type of case, because whatever case
25 you had, Judge Higgins would always announce --

1 (Coughing interruption)

2 THE COURT: -- it's just a hit and run case.
3 That's all this is. It could be an antitrust case, "it's
4 just a hit and run case." But whenever Judge Higgins shared
5 what he thought, it was always, for me as a practitioner, a
6 good opportunity to know what he thought. And I thought it
7 might be helpful as I look at this case, and -- and we've
8 written on this case and resolved issues now as we go
9 forward. At least right now, subject to reading the briefs
10 and your persuasive words in your brief, I do think in this
11 kind of case, raising issues of strong public importance,
12 that's affecting a number of citizens, potentially affecting
13 a number of citizens of the United States, when the amount in
14 controversy is alleged to be substantial, the parties'
15 resources are substantial, I'm probably going to approach
16 discovery issues with that in mind. And as we apply the
17 proportionality requirement under Rule 26 -- it's going to be
18 pretty open. I think it has to be pretty open. So I
19 encourage you to take that in mind when you have your
20 in-person meet and confer. That is not for -- that is not --
21 the plaintiffs should not construe that as we can ask for the
22 moon and beyond. There's a limit. But all the parties
23 should take it in mind that I'm going to be applying that
24 proportionality requirement. And given what I just said, the
25 nature of this case, and what it's raising and what's at

1 stake and what the parties are here doing, the importance of
2 the discovery, there are some serious allegations in this
3 case, that the plaintiffs need to work hard to see if they
4 have any substance or not. Of necessity there's going to
5 have to be a lot of discovery.

6 I anticipate when we get to privilege we may have
7 more than one status conference a month. Because I think
8 that may be where we're going to spend a lot of time with
9 each other. I hope not. But just looking at the
10 allegations, that could be the case. So just keep in mind
11 I'm going to -- I'm going to be looking at each of those
12 factors that we look at under Rule 26. But just based on
13 what's being alleged now, I think of necessity I have to
14 approach this that everybody's going to be very much involved
15 in a lot of discovery. So that's why I thought it was real
16 important that we get together. And I guess -- the last
17 thing I'll end on -- and the reason I asked for the
18 leadership -- and the reason I said earlier if you're part of
19 the leadership then you need to lead, and that goes on both
20 sides. If the plaintiffs are seeing the defendants -- I
21 mean, this is a profession. I know -- I know it's a
22 business, big business, but at the end of the day, you all
23 are professionals. You're members -- representatives of the
24 judicial system and the court system. You're a vital part of
25 it. So plaintiffs, if you see one of the defendants doing

1 something, take them aside, "You don't want to do that; let
2 me tell you why." And the same goes for the plaintiffs. And
3 Mr. Dundon and Mr. Herzfeld, say, "That's the kind of way we
4 practice here. You don't want to do that. That's not the
5 way we do those things. Let me help you make it. You still
6 going to lose." You can still do that. I'm not asking you
7 to compromise your parties's positions.

8 But there was -- there was -- on more than one
9 occasion I would -- I typically did the defendant. I would
10 go to the plaintiff and say, "You don't want to do that;
11 you're going to make that judge so mad" -- "he's going to get
12 mad" -- and I am. I'm mad at everyone now. You each have an
13 individual responsibility to make sure that the massive
14 discovery that you all have agreed to engage in, somewhat
15 reluctantly on the plaintiffs' -- defendants' side, but
16 you're here nevertheless. Let's do it in a fashion that gets
17 your work done, get it done efficiently, effectively, but
18 let's not do things that you all know you don't need to do.

19 So Mr. Dundon, you keep the people on your side
20 straight. And then, Ms. Herzfeld, you keep yours straight.

21 Now, when are we getting back together again? I
22 didn't bring that out. April -- no. That will be April -- I
23 think I accepted your new date. Yeah, it's in the order. So
24 the next one will be reset to April 5th at 1:00. And I need
25 that status report no less than five days ahead.

1 MR. COUGHLIN: Okay.

2 THE COURT: All right.

3 MR. SRINIVASAN: Very well, Your Honor.

4 THE COURT: All right. Thank you.

5 (Court adjourned.)

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1 REPORTER'S CERTIFICATE

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3 I, Lise S. Matthews, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the
7 proceedings held in open court on March 8, 2024, in the
8 matter of IN RE: Realpage, Inc., Rental Software Antitrust
9 Litigation (No. II), et al., Case No. 3:23-MD-03071; that
10 said proceedings in connection with the hearing were reduced
11 to typewritten form by me; and that the foregoing transcript
12 (pages 1 through 28) is a true and accurate record of said
13 proceedings.

14 This the 15th day of March, 2024.

15
16 /s/ Lise S. Matthews
17 LISE S. MATTHEWS, RMR, CRR, CRC
18 Official Court Reporter
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